* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 4694/02**

DATE OF DECISION: August 25, 2005

\# SULEMAN ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 4702/02**

\# AMIR AHMAD ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

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Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

+ **W.P.(C) 4703/02**

\# COMPETENT AUTOMOBILES CO. LTD. ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

+ **W.P.(C) 5428/02**

\# SUBHASH CHAND ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

+ **W.P.(C) 5429/02**

\# RAGHUBER DAYAL ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5430/02**

\# ROSHAN LAL ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5516/02**

\# SMT. SANTOSH DEVI ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

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\+ **W.P.(C) 5526/02**

\# RAMESH CHAND GOEL ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5527/02**

\# RAM NIWAS AGGARWAL ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5529/02**

\# MOHD. RAMZAN ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5530/02**

\# SULEKH CHAND GOEL ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5532/02**

\# BABU KHAN ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for

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respondent/LAC

\+ **W.P.(C) 5533/02**

\# NARENDER KUMAR GOEL ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5534/02**

\# SMT. PANNO DEVI ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5536/02**

\# RAJ KUMAR GOEL ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

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versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

+ **W.P.(C) 5609/02**

MOHD. SADIQ & ORS. ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

+ **W.P.(C) 5684/02**

MALKHAN SINGH ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA

Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5685/02**

\# MUKESH HANS ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5686/02**

\# ARJUN DEV ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5687/02**

\# AIZAZ ALAM ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with

Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5688/02**

\# SHANKAR LAL ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5689/02**

\# RAM DULARI ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent

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Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5690/02**

\# SRI KISHAN ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5691/02**

\# RAJINDER KUMAR JINDAL ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 5692/02**

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JAI PARKASH AGGARWAL ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

+ **W.P.(C) 5693/02**

KISHAN CHANDER ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

+ **W.P.(C) 5703/02**

LACHHMAN DASS ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents

27
35

^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 6109/02**

\# MAHENDER SINGH ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 6189/02**

\# BHAGWAN DASS ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 6190/02**

SANTOSH DEVI ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 6232/02**

VINOD KUMAR & ORS. ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 6233/02**

PANNA LAL ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

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$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 6234/02**

\# RAKESH KHATTAR ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 6282/02**

\# VINOD JINDAL ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

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+ **W.P.(C) 6284/02**

R.P. SHARMA ... Petitioner

! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents

^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

+ **W.P.(C) 6400/02**

GAJENDER SINGH ... Petitioner

! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents

^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

+ **W.P.(C) 6447/02**

A.S. KHAN ... Petitioner

! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

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$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 6448/02**

\# LALIT GUPTA ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

\+ **W.P.(C) 6449/02**

\# SHAMIM AHMED SIDDIQUI ... Petitioner
! Through Mr. Ravinder Sethi, Sr. Advocate with Mr. S.D. Sharma, Advocate

versus

$ UNION OF INDIA & ORS. .....Respondents
^ Through Ms. Geeta Luthra, Ms. Jhum Jhum Sarkar, Advocates for respondent
Mr. Ajay Verma for respondent/DDA
Mr. Sachin Nawani for counsel for respondent/LAC

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CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE BADAR DURREZ AHMED

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

: **T.S. THAKUR, J.**

Two precise questions fall for consideration in this batch of cases. These are :-

(i) Can a fresh declaration under Section 6 of the Land Acquisition Act, 1894 be issued by the competent authority after an earlier declaration made under the said provision is either found or declared to be legally invalid; and

(ii) If a second declaration under Section 6 of the Act is not legally barred, can the period during which a

competent court has stayed further action or proceedings in pursuance of the preliminary notification be excluded while computing the period referred to in the first proviso to Section 6?

2. The questions arise in the following factual backdrop :-

3. In terms of a notification dated 30th June, 1988, land measuring 72 bighas situate in Khasra No. 1151/3 min (new) [old Khasra No. 1665] of village Mehrauli, New Delhi was notified for acquisition under Section 4 readwith Section 17(1) and (4) of the Land Acquisition Act. This was followed by a declaration dated 18th July, 1988 issued under Section 6 of the Act in respect of the entire extent of land included in the preliminary notification. Aggrieved by the said notifications, a batch of writ petitions was filed by the owners in this court which were heard and disposed of by a Division Bench of this Court on 30th August, 2001. This Court came to the conclusion that notification dated 30th June, 1988 to the extent the same denied to the petitioner land

owners an opportunity to file objections under Section 5-A of the Act, was illegal. All subsequent proceedings based on the impugned notifications were also quashed with a direction that the petitioners could file their objections to the proposed acquisition within a period of 30 days to be counted from the date the petitioners obtained a certified copy of the judgment.

4. Consequently, the petitioners and other land owners appear to have filed their objections under Section 5-A of the Act before the Collector, who submitted a report to the Government of NCT culminating in the issue of a fresh declaration under Section 6 of the Act declaring that the entire area of 72 bighas falling in Khasra No. 1151/3 min (new) had to be acquired for the public purpose of providing a public enclosure for use by 'Anjuman Sair-E-Gul Faroshan'. The present batch of writ petitions has assailed the validity of the aforementioned declaration primarily on the ground that a second declaration could not be validly issued beyond the period of one year from the date the preliminary

notification under Section 4 had been issued.

Re : Question No. 1

5. Section 6 of the Land Acquisition Act envisages declaration of intended acquisition of any particular land needed for a public purpose or for a company. It inter alia provides that different declarations may be made from time to time in respect of different parts of the land covered by the same notification under Section 4(1) of the Act irrespective of whether one report or different reports has or have been made under Section 5-A thereof. Proviso one to Section 6(1) introduced by Land Acquisition (Amendment) Act, 1984 with effect from 24th September, 1984, however, places limitations on the period within which a declaration under Section 6 may be issued. We shall deal with the said provision while we come to Question No.2. All that need to be mentioned for the present is that neither Section 6 nor any other provision in the Act forbids the issue of a fresh declaration if the one issued earlier is either found or declared by the competent court to be invalid. Cases where

a declaration under Section 6 is quashed on the ground that no public purpose exists to justify the proposed acquisition would, however, be a class apart in which event it is obvious that a fresh declaration would be wholly out of place. That is because if the purpose for which the earlier declaration was issued has been held not to constitute a 'public purpose' within the meaning of the Act, a second declaration in satisfaction of the very same purpose would be otiose.

6. The language employed in Section 6 and the scheme of the Act apart, the question has been authoritatively answered by the Supreme Court in *State of Gujarat & Anr. Vs. Musamigan Imam Haider Bux Razvi & Anr.*, **AIR 1977 SC 594.** The argument advanced before their Lordships in that case was that the cancellation of a declaration under Section 6 amounted to withdrawal from acquisition thereby making a subsequent declaration under the Act legally impermissible. Relying upon its earlier decision in *Girdharilal Amratlal Shodan Vs. State of Gujarat*, **1966 SC 1408**, the Court repelled the contention and held

that when a notification under Section 6 of the Act is invalid, the Government may, in its place, issue a fresh notification. Section 48 of the Act did not, declared the court, preclude the Government from issuing such a fresh declaration as cancellation of an earlier notification was only a recognition of the invalidity of that notification and no more.

7. To the same effect is the decision of the Supreme Court in *State of Gujarat & Anr. Vs. Bhogilal Keshavlal & Anr.*, **AIR 1980 SC 367,** in which the Court held that even when a declaration under Section 6 of the Act is found to be invalid, the notification under Section 4 thereof continued to hold the field on whose strength another notification under Section 6 could be validly issued. Reference may also be made to *Raghunath & Ors. Vs. State of Maharashtra & Ors.*, **AIR 1988 SC 1615** where the declaration issued under Section 6 of the Act was declared invalid by a Court. The Court held that if the declaration under Section 6 is valid, the notification issued under Section 4 gets exhausted. That principle is, however, inapplicable to a case where a

declaration under Section 6 proves to be invalid, ineffective or infructuous for some reasons. Where a notification is invalid, a fresh notification under Section 6 could be issued regardless of whether the invalidity is on account of a declaration by the court or the Government itself withdraws the same. The following passage is in this regard apposite :-

> "Once there is a valid declaration under Section 6, the scope of the notification under Section 4 will get exhausted. This principle however, does not apply to a case where the declaration under Section 6 proves to be invalid, ineffective or infructuous for some reason. Where a notification under Section 6 is invalid, the Government may treat it as ineffective and issue in its place a fresh notification under Section 6. In principle, there is no distinction between a case where a declaration under Section 6 is declared invalid by the Court and a case in which the Government itself withdraws the declaration under Section 6 when some obvious illegality is pointed out." (Emphasis supplied).

8. In fairness to Mr. Sethi, we must state that he did not seriously dispute the settled legal position that a declaration under Section 6 can be followed by another

declaration if the earlier declaration is found to be invalid or is declared to be so by any competent court as is the position in the instant case. Question No. 1 is, therefore, answered in the affirmative.

Re : Question No. 2 :

9. The fact that a second declaration can be issued is not conclusive of the controversy in the present case. That is because the petitioners argue that any such declaration can be valid only if made within a period of one year from the date the preliminary notification under Section 4(1) of the Act was published. This period had, according to the petitioners, expired in the present case for the preliminary notification was admittedly published on 30th June, 1988 while the impugned declaration under Section 6 was made on 8th July, 2002, i.e., much beyond the period of one year stipulated in terms of para 2 of the first proviso to Section 6 (1) of the Act. Mr. Sethi strenuously argued that the provisions of explanation 1 to Section 6 had no application to cases where a declaration under Section 6 had been found

to be invalid and, therefore, quashed by a competent court. He submitted that the provisions of the explanation are available only in cases where further action pursuant to the preliminary notification could not be taken on account of a pending writ petition or other proceedings in which the court had restrained any such action or proceeding but not in cases where a declaration had been made within the time stipulated for the same but found to be invalid and quashed. In support of that submission, Mr. Sethi placed heavy reliance upon the judgment of the Supreme Court in *Padma Sundara Rao & Ors. Vs. State of Tamil Nadu & Ors.*, **2002(3) SCC 533** and the decision of their Lordships of the Supreme Court in *Oxford English School Vs. Government of Tamil Nadu & Ors.* **(1995) 5 SCC 206**.

10. Section 6 of the Land Acquisition Act, 1894 to the extent the same is relevant may, at this stage, be gainfully extracted :-

> **"6. Declaration that land is required for a public purpose.-(1)** Subject to the provisions of Part VII of this Act, when the

Appropriate Government is satisfied after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5-A, sub-section (2):

[Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section(1),-

(i)published after the commencement of the land Acquisition (Amendment and Validation) Ordinance, 1967 but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification; or

(ii)published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification :

Provided further that no such declaration shall be made unless the compensation to

be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1. - In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.- Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) X X X X X X X X

(3) X X X X X X X X

11. A careful reading of the above, would leave no manner of doubt that neither sub-section (1) of Section 6 nor explanation 1 to the same forbids exclusion of time during which proceedings remain stayed by an order of a court for purposes of determining whether the second declaration issued under Section 6 is or is not within the period prescribed for the same. The language employed in

explanation 1 is on the contrary clear and unambiguous. It permits exclusion of time during which proceedings remained stayed under the orders of the court while computing the periods referred to in the first proviso. The periods stipulated in the first proviso is doubtless applicable to all declarations under Section 6 irrespective of whether the same is the first or a subsequent declaration. If a second declaration under Section 6 is permitted by law, the same must conform to the requirements of limitation as stipulated in the first proviso to Section 6(1). It must, as a necessary corollary, also mean that while computing the period stipulated in the first proviso, the Court and so also the authority competent to issue the declaration, shall be entitled to exclude from computation the period referred to in explanation 1. Suffice it to say that there is no juristic principle on which the remedial provisions contained in explanation 1 can be held to be inapplicable to cases where a second declaration becomes necessary on account of the quashing or withdrawal of the one issued earlier. So long as

a declaration is within the stipulated period prescribed by proviso 1 to Section 6 after excluding the period during which proceedings had remained stayed under an order of the Court, the same would be valid. Just because an earlier declaration had been quashed on account of any legal infirmity by a competent court would not obliterate for purposes of the second notification the provisions of explanation 1 which makes no distinction between the first or a subsequent declaration.

12. The decision of the Supreme Court in *Padma Sundara Rao's case* (supra) does not in our view state the law differently. In order to correctly appreciate the ratio of the said decision, it is necessary to refer to three other decisions rendered by their Lordships which appear to have necessitated an authoritative pronouncement by a Constitution Bench.

13. In *Oxford English School Vs. Government of Tamil Nadu & Ors.* **(1995) 5 SCC 206**, the High Court had, while quashing the acquisition proceedings, directed that there

shall be a fresh enquiry under Section 5-A in accordance with law and if the Government decided to proceed with the acquisition, a declaration under Section 6 of the Act should be issued within six months from the date of the judgment. The question that arose for consideration was whether such a direction could have been issued by the court having regard to the first proviso to Section 6 which required that no declaration should be made after the expiry of the period of three years applicable in that case as the preliminary notification had been issued before the commencement of the Land Acquisition Amendment Act, 1984.

14. On behalf of the respondents, reliance was placed upon the explanation to Section 6 of the Act. It was argued that if the period during which there was a stay from the High Court was excluded, a fresh notification under Section 6 would be within the outer limit of three years stipulated under the said provision. That contention was repelled. The Court held that the stay order was, in that case, obtained from the High Court long after the expiry of the period of

three years provided under the proviso to Section 6. The exclusion of the period during which the stay remained operative was, therefore, inconsequential. The Court further held that even if one excluded the period during which the subsequent stay operated, the issue of a declaration under Section 6 would remain beyond the period of three years prescribed under the proviso.

15. The Court observed :-

> "The respondents have relied upon Explanation 1 to the proviso which provides that in computing the period of three years the period during which any action or proceeding to be taken pursuant to the notification under Section 4(1) is stayed by an order of court shall be excluded. In the case of the appellant such a stay was obtained by them from the High Court of Madras on 20-4-1987. This was long after the expiry of the period of three years provided under the proviso to Section 6. Even if one excludes the period during which the subsequent stay operated, the issuance of a fresh declaration under Section 6 would be clearly beyond the period of three years prescribed under the proviso to Section 6. Since the prohibition on issuance of a declaration under Section 6 after the expiry of three years from the date of the publication of the notification under Section

4(1) is absolute, the High Court could not have given any direction permitting issuance of the declaration under Section 6 within six months from the date of its judgment." (Emphasis Supplied).

16. Then came *N.Narasimhaiah & Ors.Vs. State of Karnataka* **(1996) 3 SCC 88**. In that case, a notification under Section 17(4) dispensing with an enquiry under Section 5-A had been quashed with liberty to the State to proceed further in accordance with law, i.e., to conduct an enquiry under Section 5-A and issue a declaration under Section 6 if the Government was of the opinion that the land was needed for a public purpose. The question that arose for consideration in that background was whether the limitation prescribed under Clause (ii) of first proviso to sub-section (1) would still remain operative and be capable of being complied with. The Supreme Court held that the Government was bound, under the orders of the Court, to hold an enquiry under Section 5-A and if the Government still opined that land is needed for a public purpose, a declaration under Section 6 should be published within "one

year from the date of the receipt of the order of the court by the Land Acquisition officer". The following passage from the said decision is in this regard relevant :-

> "The Government is bound under the order of the court to hold an enquiry under Section 5-A. Thereafter, if the Government still opines that the land is needed for public purpose, declaration under Section 6 should be published within one year. This interpretation would render judicial review efficacious and meaningful and public purpose subserved and the aggrieved owner would get an opportunity to vindicate his grievance. Thus the limitation prescribed in clause (ii) of the first proviso to sub-section (1) of Section 6 would apply to publication of declaration under Section 6(1) afresh. If it is published within one year from the date of the receipt of the order of the court by Land Acquisition Officer, declaration published under Section 6 (1) would be valid".(Emphasis Supplied)

17. The above decision was followed by the Supreme Court in *State of Karnataka & Ors. Vs. D.C. Nanjudaiah & Ors.* **(1996) 10 SCC 619**. That was also a case where the declaration issued under Section 6 within the stipulated period was found to be invalid on account of a faulty enquiry

under Section 5-A. The Court held that if the declaration was on that ground quashed, a fresh enquiry would become necessary. The limitation for conducting any such enquiry would, declared their Lordships, start running from the "date of the receipt of the order of the High Court" and not from "the date from which the original publication under Section 4 (1) came to be made". The following passage is in this regard instructive :-

> "The limitation, therefore, of conducting the enquiry and publication of the declaration within three years would start running from the date of the receipt of the order of the High Court and not from the date on which the original publication under Section 4 (1) came to be made. This view was laid by this Court in Narasimhaiah case. For the same ratio, the appeals are to be allowed and the declaration has to be quashed. Accordingly, the declaration is quashed. The appellant is permitted to conduct an enquiry within a period of four months from the date of the receipt of this order and have the declaration published within one month thereafter.

18. A conspectus of the above decisions would show

that the question whether the period during which further action or proceedings pursuant to a preliminary notification remained stayed under the orders of a Court could be in terms of explanation 1 to Section 6 did not, strictly speaking, fall for consideration. In Oxford English School's case, the question of exclusion was no doubt raised but the contention was repelled on the ground that the interim order of stay had itself been issued after the period of three years admissible under clause 1 of the first proviso to Section 6(1). Exclusion of the period during which the interim order remained operative was not, therefore, going to extend or add any further time to what was otherwise permissible under the said provision. The decisions in *Narasimhaiah's and Nanjudaiah's* cases (supra), however, proceeded on a different basis altogether. The court in those two cases held that the period of one year stipulated under Clause (ii) to proviso to Section 6(1) ought to run not from the date the preliminary notification was published but from the date a copy of the judgment was received by the Collector. In other

words, the starting point for reckoning the stipulated period of one year in cases falling under the above provision itself was shifted to a date which was different from what was prescribed under the said provision. This in essence had the effect of giving a fresh period of limitation to the competent authorities to issue a declaration reckoned from a date different from the one that was stipulated under the provisions of the Act. Constitution Bench decision in *Padma Sundara Rao's* case (supra) addressed the said aspect alone. The question was whether a fresh declaration under Section 6 could give to the competent authority a fresh period of limitation reckoned from a date other than the one which the Act recognised. The Court answered that question in the negative and held that there was no question of reckoning the period prescribed under the provision from the date of the service of the High Court's order as any such view was irreconcilable with the language of Section 6(1). The view expressed in *Narasimhaiah's* case, if accepted to be correct, observed their Lordships, would mean that a case may be

covered by not only clause (i) or clause (ii) of proviso to Section 6(1) but also by a non-prescribed period. This was not, declared the court, legally permissible and could never be the legislative intent. The following passage is in this regard apposite :-

> "There is no scope for reading something into it, as was done in Narasimhaiah case. In Nanjudaiah case the period was further stretched to have the time period run from date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clause (i) and/or clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.
>
> "The view expressed in Narasimhaiah case and Nanjudaiah case is not correct and is overruled while that expressed in A.S. Naidu case and Oxford case is affirmed."

19. Mr. Sethi was at pains to read into the above decision, a declaration to the effect that the provisions of explanation 1 to Section 6(1) of the Act have no application

to cases where a previous declaration under Section 6 has been quashed by the court. We find it difficult to do so. The court has in the beginning of the said decision itself formulated the question that fell for consideration in the following words :-

> "Whether after quashing of notification under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act" fresh period of one year is available to the State Government to issue another notification under Section 6."

20. It is manifest that the application of explanation to a fresh declaration issued after withdrawal or quashing of the one issued previously never arose for consideration and has not been examined by their Lordships. The law regarding interpretation of the judgments of the Supreme Court is well-settled by a catena of decisions delivered by their Lordships. A decision is available as a precedent, only if it decides a question of law. [**See:** *State of Punjab & Ors. Vs. Surinder Kumar & Ors.*, **AIR 1992 SC 1593**]. The judgment must be read as a whole and the observations

from the judgment have to be considered in the light of the questions which were before the Court. [**See :** *Commissioner of Income-tax Vs. M/s. Sun Engineering Works (P.) Ltd.,* **AIR 1993 SC 43** and *State of Punjab Vs. Baldev Singh*, **(1999) 6 SCC 172**]. A decision cannot be relied upon in support of a proposition that it did not decide. [**See :** *Mittal Engineering Works (P) Ltd. Vs. Collector of Central Excise, Meerut*, **(1997) 1 SCC 203**]. It is not fair or proper to read a sentence from the judgment, divorced from the complete context in which it was given and to build up a case treating as if that sentence is the complete law on the subject. [**See :** *J.K. Industries Ltd. & Ors. Vs. Chief Inspector of Factories and Boilers & Ors.*, **(1996) 6 SCC 665**].

21. We have, in the light of these pronouncements, no hesitation in repelling the contention of Mr. Sethi that the decision in Padma Sundara Rao's case (supra) declares that explanation 1 has no application to cases where an earlier declaration under Section 6 of the Act has been quashed or withdrawn.

22. What remains to be seen is whether or not the declaration in the present case was issued within the stipulated period of one year after exclusion of the period during which the proceedings pursuant to the preliminary notification had remained stayed under orders of this Court. The preliminary notification was issued on 30th June, 1988. The impugned declaration was issued on 8th July, 2002, i.e., 14 years and 8 days later. From the said period, if we MOST IMMEDIATE deduct the period during which there was an interim order from this court, i.e. the period between 12th August, 1988 when the order was issued till 30th August, 2001 when the same was vacated with the disposal of the petitions, what remains is a period of 11 months and 20 days. This implies that the impugned declaration was after giving effect to explanation 1 to Section 6(1) issued within a period of one year of the date the preliminary notification was issued. No fault can, therefore, be found with the said notification on that account. Since no other point was argued by Mr. Sethi in support of the petitions, the same are liable

to be dismissed. We accordingly dismiss these petitions with costs assessed at Rs.1500/- in each petition.

Sd/-
T.S. Thakur, J

Sd/-
Badar Durrez Ahmed, J

AUGUST 25, 2005
Manish/Pk

C.D.-I (a) Continuation Sheet

Sr. No.	Date	Orders

% 25.08.2005

Present: Mr Ravinder Sethi, Sr. Advocate with Mr N.S. Vashisht for the petitioner.

Ms Ritika Walia for the Respondent.

+ **WP (C) 4694/2002**
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Immediately after the judgment was pronounced, Mr Sethi prayed for continuance of the interim protection granted by this court for a period of four weeks to enable the petitioners to seek appropriate redress before the Apex Court. We see no reason to decline that prayer. We, therefore, direct that the interim orders passed by this court in these petitions shall continue to remain operative but only for a period of four weeks from today.

Sd/-
T.S. Thakur, J

Sd/-
Badar Durrez Ahmed, J

August 25, 2005
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